AL SHERMAN

IBLA 82-144 Decided January 4, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, deeming an unpatented mining claim abandoned and void. OR 7065.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

   Where a mining claim was located in Apr. 1970 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

   The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Al Sherman, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Al Sherman has appealed the November 13, 1981, decision of the Oregon State Office, Bureau of Land Management (BLM), which deemed the unpatented Aljak or Aljack placer mining claim abandoned and void because the claim was not recorded with BLM on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant states that he recorded his mining claim 1/ with BLM on October 22, 1970, pursuant to the Oregon & California Lands Mining Claim Act of April 8, 1948 (O&C), ch. 179, 62 Stat. 162, and surely that should satisfy the FLPMA requirement. He argues that the recordation of mining claims required by FLPMA is unconstitutional and alleges that he basically makes his living from the gold he extracts from the claim. He states that he has lived on the claim for more than 32 years.

The record shows that appellant attempted to obtain a patent for his mining claim, but that his application, OR 6246, did not meet the regulatory requirements. Despite instructions from BLM as to corrective actions required, he did not perfect the application, and apparently it has been rejected.

During the pendency of the mineral patent application, BLM advised appellant of the recordation requirements of FLPMA, but he protested the requirement as he had earlier recorded his claim under the O&C mining act. His protest was dismissed and this Board, in Al Sherman, 38 IBLA 300 (1978), affirmed BLM, holding that a prior recordation of the mining claim under the O&C Act did not relieve him of the necessity to comply with the recordation requirements of FLPMA. A petition for reconsideration was denied by Board order of March 29, 1979.

The land in the claim is the E 1/2 NE 1/4 SW 1/4 sec. 5, T. 30 S., R. 2 W., Willamette meridian, Douglas County, Oregon, within the Roseburg District. The BLM Roseburg office, in trying to resolve the mining claim occupancy by Sherman, requested the Oregon State Office to issue the decision deeming the Aljak placer mining claim abandoned and void because it was not recorded as required by FLPMA.

[1] As we pointed out in our earlier decision, Al Sherman, supra, the Congress enacted new filing requirements for the owners of unpatented mining claims on the public lands of the United States. Briefly, FLPMA requires the owners of unpatented mining claims located on or before October 21, 1976, to file with the proper office of BLM on or before October 22, 1979, a copy of the official record of the notice of location and a copy of the evidence of assessment work, and on or before December 30 of each calendar year thereafter a copy of the evidence of assessment work or a notice of intention to hold the claim, as recorded in the appropriate county recording office. The statute

1/ The record indicates that the Aljack placer mining claim was located May 23, 1949, amended Mar. 12, 1951, and again amended to its present description as the Aljak placer mining claim Apr. 27, 1970.

clearly states that failure to file such instruments timely shall be deemed conclusively to constitute abandonment of the claim by the owner. 43 U.S.C. § 1744(c) (1976).

In Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981), the court held that the FLPMA requirements for filing of unpatented mining claims are not arbitrary or unreasonable. In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), the court held that the regulations promulgated under FLPMA, that unpatented mining claims could be deemed abandoned and void if filings required under the Act were not timely made, were not in excess of statutory jurisdiction, authority, or limitations. Neither court suggested that the recordation requirements were in any way unconstitutional.

The responsibility for complying with the recordation requirements of FLPMA rests with the owner of an unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Where a mining claimant refuses to make the necessary filings under FLPMA, the claimant must bear the consequences of his failure to act.

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining, Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. 371-72.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques
Administrative Judge

We concur:

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Bernard V. Parrette
Chief Administrative Judge

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C. Randall Grant, Jr.
Administrative Judge